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MORRIS v WOW BAO - 17-CH-12029
COURT HEARING - 11/17/2021

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1 (The following proceedings were had
2 via remote videoconferencing:)

3 THE CLERK: Morris vs. Wow Bao,
4 17-CH-12029.

5 MR. FICZKO: Good afternoon, your Honor.
6 Andy Ficzko on behalf of the Plaintiff.

7 MR. WARD: And Christopher Ward on behalf
8 of the Defendant.

9 THE COURT: Good afternoon. All right
10 there's also a Jessica.

11 (Whereupon, a discussion was had
12 off the record.)

13 THE COURT: This is on the Plaintiff's
14 petition to certify a class?

15 MR. FICZKO: Correct, your Honor.

16 THE COURT: You may proceed.

17 MR. FICZKO: Thank you, your Honor. As
18 you just indicated before the court, it is Plaintiff's
19 motion to certify a class of a little over 1300
20 Illinois consumers asserting identical claims under
21 the Biometric Information Privacy Act, or BIPA.

22 Specifically, these individuals were
23 customers of a Wow Bao restaurant who used facial
24 recognition at an ordering kiosk at one of Wow Bao's

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1 stores from approximately 2016 through 2017. To
2 facilitate faster checkouts and higher sales volume,
3 while minimizing payroll costs, the Defendants
4 implemented facial recognition self-ordering kiosks at
5 three of its restaurants that used a customer's facial
6 geometry as a means of identification for ordering
7 food and drinks.

8 When a customer chooses the facial
9 recognition feature, the kiosk built-in facial
10 recognition camera collects the customer's facial
11 geometry and stores the data on its database. When a
12 customer returns to place a later order, they can
13 recall their previous orders with facial recognition.

14 The facial recognition cameras
15 compare basically the live image of a customer's face
16 with the facial geometry stored in the cloud database
17 until it makes a match. When a match is found, the
18 kiosk pulls up the customer's orders associated with
19 the customer's guest account. So basically what
20 happens is a customer would simply walk up to the
21 kiosk and the kiosk would recognize them from their
22 facial geometry for purposes of recalling and placing
23 orders.

24 Through this biometric tracking

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1 system, the Defendants collected, used, stored, and
2 disclosed its customers' facial geometry when they
3 were customers at their restaurants, all while failing
4 to comply with the simple, easy-to-follow BIPA
5 requirements.

6 For example, Defendants did not
7 inform them of the purpose and the length of time that
8 their biometric data was being collected, stored, and
9 used, and it did not make available to the public a
10 retention schedule and guidelines for the destruction
11 of its customers' biometric data, and they did not
12 receive a release to collect, store, and use their
13 biometric information, nor did they receive consent to
14 disclose this biometric data to third parties such as
15 Nextep Systems Inc. in this case which hosted the
16 biometric data.

17 The same evidence, the same common
18 evidence shows that the Defendants uniformly violated
19 BIPA in the same way for all 1,369 customers who used
20 their facial recognition kiosk by collecting and
21 disclosing their biometric data. And what I mean by
22 "biometric data" is biometric information and
23 biometric identifiers as defined by BIPA, all without
24 complying with BIPA.

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1 Basically, the Defendants concede
2 that this case meets the requirements for class
3 certification; they only argue that this motion should
4 be denied because it may be more difficult than they
5 anticipated to compile a class list. But the law is
6 clear: We don't need to name specific individuals who
7 are possible class members. There's no such rule that
8 requires a so-called administrative feasibility
9 requirement.

10 Policy reasons also call for this
11 court to reject such a requirement because it's
12 inconsistent with the general rule that direct notice
13 to the class is not required by due process. In fact,
14 there are a number of ways to identify class members,
15 including through self-identification. Notice can
16 also be made by publication if necessary.

17 With all that said, these means
18 shouldn't even be necessary here. All we need here is
19 the transaction data to call a class list, and
20 discovery showed that the necessary data was collected
21 and stored through the kiosk and the software used
22 therein.

23 Nextep and Defendants had a cloud
24 system that they can access that contains not only

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1 facial geometry data of its customers but also
2 connects the customers' facial geometry to their
3 credit card numbers and phone numbers in what's called
4 a guest account.

5 Discovery also revealed that the
6 ordering kiosk housed what's called a transaction
7 manager software on the computer within the actual
8 kiosk that store log files, credit card transaction
9 files, and order transaction files which communicate
10 up to the cloud.

11 The kiosk also interfaced with the
12 point of sale system for the purposes of communicating
13 customer information. All we need to do here is
14 simply connect a user facial geometry file to their
15 order history, get the dates and store locations of
16 these user orders, which would obviously then be
17 connected to other data such as payment data which we
18 could then use to identify class members or even
19 contact them for the purposes of sending notice.

20 With that said, though, what's
21 concerning is that after the lawsuit was filed, there
22 were a total of six facial recognition kiosks used at
23 Wow Bao at the three locations, but all but one or two
24 of these kiosks have either been destroyed or lost,

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1 and not a single representative of Defendants could
2 testify as to who ordered the kiosk to be destroyed or
3 why they were destroyed despite the obligation to
4 preserve evidence for litigation purposes.

5 Finally, Defendants submit a
6 declaration from Brian Leary, an employee of Nextep.
7 Mr. Leary attempts to contradict all of the evidence
8 in the record that confirms a customer's facial
9 geometry data is linked in guest accounts to their
10 credit card numbers, phone numbers, in addition to
11 their order history.

12 It's worth noting, though, that
13 there's a pending BIPA lawsuit against Nextep, so
14 Mr. Leary clearly has an interest in ensuring that no
15 precedent is set in this case that may impact the case
16 against his company. But again, there simply is zero
17 evidence to support his contentions. Nextep's own
18 documents and employee testimony clearly contradict
19 Mr. Leary's unsupported assertions.

20 At the end of the day, Defendants do
21 not challenge that Plaintiff failed to satisfy the
22 actual prerequisites to class certification. This
23 class should be certified as a class action,
24 Ms. Morris should be appointed as class

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1 representative, counsel for Plaintiff should be
2 appointed class counsel, and notice should go out to
3 the 1,369 customers who had their personal and private
4 biometric data illegally collected, used, stored, and
5 disseminated by Defendants in violation of BIPA.

6 THE COURT: Thank you.

7 Mr. Ward?

8 MR. WARD: Your Honor, I won't call it
9 omission, but I think it's certainly a downplaying of
10 the critical detail in this case. Mr. Ficzko said and
11 he alluded to Nextep multiple times, but tried to sort
12 of convolute the Defendants in this case with Nextep
13 and calls Nextep as hosting the data.

14 The reality and the evidence on this
15 across the entire record is clear that Defendants in
16 this case have no access to that data, it's entirely
17 captive within the Nextep system. So what happens is
18 the Nextep technology captures the data at issue here,
19 uploads it to the Nextep cloud, and there's simply a
20 series of Nextep -- or, I'm sorry, files within the
21 Nextep cloud that is solely within the control of
22 Nextep.

23 THE COURT: Why does that matter?

24 MR. WARD: It matters because here is the

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1 way this works out. If you look at the Brian Leary
2 declaration, he's the only one with actual personal
3 knowledge in this case that has provided testimony
4 evidence as to how this technology works. The other
5 two individuals to whom Mr. Ficzko alluded, both
6 testified at their deposition that they have no
7 personal knowledge of how these systems work.

8 One guy is a sales person who does
9 not have any sense of the technology, the other was an
10 installer, essentially, who wrote one e-mail which is
11 what Mr. Ficzko alluded to, and then during his
12 deposition contradicted that e-mail, which is cited in
13 footnote 3 of our brief, the specific testimony he
14 gave saying, no, there is not a link between any
15 identifying data and these facial geometry files.

16 But this is important because the way
17 the system works is -- and this is all laid out very
18 clearly in the Brian Leary declaration -- there's no
19 identifying information within these 1369 files.
20 They're not individuals, by the way, your Honor,
21 they're simply files, they're just facial geometry
22 files. We have no idea if that, in fact, corresponds
23 to 1369 people or less than that, but it's simply an
24 algorithmic file, and Nextep is in complete possession

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1 of those data, and it has testified it has no way to
2 unpack those files to identify any single individual.

3 So the only putative class member who
4 we can absolutely identify in this case is the
5 Plaintiff, and that's simply because she's the named
6 party here.

7 Now, I'm not saying that this is a
8 heightened ascertainability standard as they have
9 argued in their reply, and I'm not saying that the
10 court needs to be able to identify all of the class
11 representatives -- or all of the putative class
12 members rather, before it can certify the class. What
13 I am saying is the court's got to be able to identify
14 at least some of them or have some process --

15 THE COURT: But the process would
16 simply -- there are two ways to, in the court's
17 mind -- notwithstanding Plaintiff's argument, there
18 are two ways or methodologies that immediately come to
19 mind, number one is publication, number two is simply
20 putting up a sign in the stores, assuming they still
21 exist, inviting anyone who within the time period in
22 question was a customer and submitted themselves to
23 providing their biometric data by facial recognition.

24 MR. WARD: Sure.

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1 THE COURT: Why is that a problem?

2 MR. WARD: Well, let me just make the
3 first point, your Honor, which is if there is a
4 mechanism to identify any class members, that
5 should've been part of the Plaintiff's burden. This
6 issue and the key part of why this case is not
7 certifiable was not even addressed in their moving
8 papers. This is now scrambling on reply.

9 So this should have all been vetted
10 ahead of time, this should have been sorted in
11 discovery. If they thought that there was a
12 contradiction in the evidence between what we have
13 always asserted, which is you can't identify class
14 members here, and they can think the evidence clearly
15 shows that you can, then that needed to be vetted in
16 discovery and proven in their moving papers. And if
17 we need a supplemental briefing on that, then so be
18 it, but that is their burden to sort.

19 As to the question of publication or
20 posting, couple things that I think are really
21 important. The time period here is 2016 to 2017; we
22 are nearing 2022 at this point. These three stores --
23 well, one of them no longer exists; that was the one
24 near 900 North Michigan Avenue. The other two are

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1 within Water Tower and at State and Lake, which is
2 incredibly high traffic areas, incredibly high traffic
3 areas for individuals who are tourists, who are
4 itinerant in Chicago.

5 The likelihood that we would capture
6 a representative and sufficient number of
7 self-identified individuals who used this technology
8 of Nextep almost five years ago in these high traffic
9 locations is very unreliable. And if you look at the
10 authority on this, the courts don't say that
11 publication or a posting is sufficient in all
12 circumstances, right, it's going to be case-specific.

13 And while I agree -- for example,
14 there's a Seventh Circuit case that deals with a bar
15 and a couple of ATMs in a college town where you're
16 going to have much more repeat traffic, there was not
17 nearly the amount of time gap between the
18 certification issue. And important in that case, by
19 the way, the Seventh Circuit also said we're not even
20 sure what records they do have, versus here we're
21 talking about something 500 years ago -- or, I'm
22 sorry, five years ago in Water Tower and at State and
23 Lake where the amount of traffic and the amount of
24 capture or false hits we might get here, right, what

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1 is the court going to do if we publish this and we get
2 zero response?

3 You know, I mean, these are issues
4 that are coming down the path potentially in this
5 case, and I think they needed to be vetted at this
6 stage in class certification and they weren't. And
7 that's the reason why I bring up the Plaintiff's
8 burden, is because this stuff should have been vetted
9 out or we still need to vet it out, because I think
10 this is really important and we can't simply say, oh,
11 it's a simple combination of looking at the cloud and
12 corresponding it to a transaction data, because I
13 believe the evidence says that's not how it works and
14 it's impossible to get to that stage.

15 So if we have a contradiction in how
16 we look at what the evidence shows, then either the
17 Plaintiff needed to sort that out in their moving
18 papers and satisfy their burden when they sought class
19 certification or, at a minimum, we need to have
20 supplemental briefing on it.

21 THE COURT: Can I ask you a follow-up
22 question?

23 MR. WARD: Sure.

24 THE COURT: It seems to me that the

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1 company would have kept data on how many people -- and
2 I think this is argued -- how many people used the
3 facial recognition software, how many orders were
4 placed as a consequence of it, if for no other reason,
5 to monitor its effectiveness, and wouldn't that be a
6 source of information in terms of the parameters of
7 how many people would be in this class.

8 MR. WARD: So, your Honor, the answer to
9 that is Nextep did keep that data, and during the time
10 that our clients were customers of Nextep --

11 THE COURT: Yeah, but did Nextep destroy
12 that information?

13 MR. WARD: No. As I understand it, from
14 my information --

15 THE COURT: They're subject to subpoena;
16 aren't they?

17 MR. WARD: They are subject to subpoena,
18 and they are subject to exploration of these issues
19 that I have been raising in terms of whether these
20 1369 files can be linked to 1300-and-some individuals
21 or whatever.

22 My point is that that was never
23 discovered by the Plaintiff, they never went down that
24 route to search that from Nextep; we did. I

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1 interviewed Mr. Leary, and he was willing to provide
2 the affidavit that he provided. He is the only one
3 with the personal knowledge on this that we have been
4 able to identify.

5 So I agree with you, this should have
6 been addressed, but --

7 THE COURT: Let me ask you one more
8 question, and it's really one of certification,
9 because are you suggesting to the court that the
10 parent company, Lettuce Entertain You, is saying they
11 never kept this kind of information for its stores,
12 and particularly Wow Bao, in particular; that Wow Bao,
13 the management company or the management folks at
14 Wow Bao never within their own -- within the confines
15 of their own facilities never kept this kind of data
16 on who was using this biometric data and whether it
17 was effective and how effective of a marketing tool it
18 was and how effective of a tool for tracking foot
19 traffic in and out of its stores and its customers?

20 MR. WARD: Your Honor, I think my answer
21 to that is sort of. Right? I guess I take issue with
22 the verb "kept," because that meant that they had
23 access to these data at some point, and the reality
24 is -- and again, I have explored this extensively, it

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1 wasn't really addressed in the Plaintiff's moving
2 papers, but our clients never had access to their
3 data. The way these kiosks worked is that they would
4 literally take this process and immediately upload it
5 to the cloud --

6 THE COURT: So they never got reports?

7 MR. WARD: I'm sorry?

8 THE COURT: They never got reports?

9 MR. WARD: What they could do is go onto a
10 dashboard. That was, again, maintained by Nextep to
11 get some basic customer data, but when Nextep
12 discontinued that service, our clients no longer had
13 access to that.

14 But, again, nothing from that
15 dashboard, your Honor, would provide the customer
16 information. It's the same issue, it was -- it would
17 simply be sort of bland data about the number of
18 transactions without any idea, any mechanism to trail
19 any single transaction to a user.

20 THE COURT: Well, yes, but part of this
21 discussion is about how many people are actually in
22 this class, and the transactional data would give you
23 some indication, correct?

24 MR. WARD: What I understand, your Honor,

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1 from Nextep is that it can say it has 1369 files. As
2 far as whether those are 1369 --

3 THE COURT: No. No. No. My question
4 goes to the reports that Wow Bao could get off, as you
5 described it, the dashboard as to how many people on a
6 given day or in given month could use this particular
7 system, correct?

8 MR. WARD: I don't know the answer to that
9 question. I presume that would have been available in
10 real time, your Honor. It's not available now because
11 it would correlate back to the Nextep data, but it
12 still would suffer from the same problem, which is
13 it's just very superficial data about a number of
14 transactions, not a number of users and without any
15 ability to identify a specific user to a specific
16 transaction.

17 THE COURT: Yeah, but the court finds it
18 relatively hard to believe that this would be
19 superficial data in light of the fact that they're
20 doing this anyway. I mean, they're collecting data.
21 Usually when people collect data, they collect all
22 kinds of data, and that's sort of why the statute is
23 in place in the first place, because of the basic
24 overreaching of companies who are collecting data,

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1 biometric or otherwise.

2 So the court finds it somewhat hard
3 to believe that, nah, it's just a limited amount of
4 data relative to the folks who were using this system,
5 and it no longer exists. That seems fairly
6 implausible to the court. Tell me why that's the case
7 when we are at this juncture, a data-driven society in
8 every aspect.

9 MR. WARD: Sure. And at a superficial
10 level, your Honor, I totally understand the
11 skepticism, right, but again, we go back to this idea
12 of the distinction between my client and Nextep
13 Systems.

14 Nextep has all of the data, has all
15 of the relevant data, and it could have been
16 discovered, it could have been disclosed or explored
17 in discovery by the other side prior to bringing this
18 motion, and they didn't. So we are left to explain
19 why something seems implausible because, to my view,
20 this record hasn't been totally established and
21 developed by the Plaintiff to show they've met their
22 burden.

23 THE COURT: Okay. Humor me one more time,
24 Counsel, because I don't know why your client wouldn't

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1 have tons of data, because your client put this system
2 up in the first place, and they did it for a reason.

3 They did it because they thought
4 that, number one, it would improve customer service,
5 presumably that it would make their operation go
6 faster; and I would imagine there was a whole host of
7 other data that they were going to get, biometric,
8 demographic, and so forth, that they thought would be
9 useful to them in marketing their store, in traffic in
10 and out of their store, and what their company is
11 buying when they come in, what their favorites are,
12 what they come in and order all the time, how often
13 they do it, when they do it, where they do it, whether
14 it gets delivered or they pick it up, or any number of
15 data points.

16 So, again, I'm just struggling with
17 this notion that, nah, we don't have a whole lot of
18 stuff, most of it is with the company who provided the
19 software. That seems to be contrary to the point of
20 putting this system in in the first place so they
21 don't get a lot of data.

22 MR. WARD: Sure. And I think part of the
23 court's understandable skepticism again comes from the
24 fact that this record is underdeveloped.

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1 The way that this all happened is
2 that Nextep had actually been providing kiosks to the
3 Wow Bao stores for a number of years before. As part
4 of a scheduled upgrade -- and, you know, all this
5 evidence is out there if we need to demonstrate it
6 through briefing or whatever -- before a scheduled
7 upgrade, Nextep installed these three kiosks at
8 these -- it's actually six kiosks at three stores.
9 Without any request to do so from our client, they
10 essentially put facial recognition in as an upgrade.

11 Our clients protested if they were
12 going to have to pay more for it, and Nextep said no.
13 And the evidence fully developed in this case through
14 multiple depositions basically says our clients had no
15 involvement in the process. Literally, the only thing
16 they did was provide power to the kiosks, a network
17 connection, and then Nextep did everything from there.
18 All of the data are theirs, all of the processes are
19 within their software and their hardware.

20 And so any time -- and this is what
21 our client's witnesses consistently testified to, is
22 anytime they needed any information at all about what
23 was going on with these systems, they had to go to
24 Nextep. So it's not accurate that our clients put

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1 these machines with facial recognition into their
2 stores trying to gather additional data and take
3 additional biometrics; they were put in by Nextep at
4 Nextep's choice. And, yeah, they got used for a
5 little while, although not that well as people
6 testified.

7 But I go back to this point that I
8 think these are important questions; I think these are
9 important aspects of whether this is a certifiable
10 class. And I have these explanations, your Honor, but
11 ultimately the legal burden is for the Plaintiff to
12 answer that and show why this class can be certified
13 in light of these concerns, and that was never
14 addressed in their moving papers and only scrambled to
15 in response to our opposition.

16 So either the motion should be denied
17 for failure to carry the burden, or at least they
18 should be ordered to brief these issues and
19 demonstrate why these concerns are not surmountable.

20 THE COURT: All right. Thank you.

21 Counsel?

22 MR. FICZKO: Your Honor, just to reiterate
23 my point, Defendant simply has not to this point
24 challenged any of the requirements that we need for

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1 class certification. The so-called ascertainability
2 is not a reason to deny class certification.

3 Defense counsel kept harping on that
4 his client has limited data. Well, the reason why
5 they have limited data is for -- they have to blame
6 themselves because there is no reason why four, five,
7 all of the kiosks have been destroyed or lost. We
8 simply -- and no one at Nex- -- or excuse me, at Wow
9 Bao could indicate where they were, why they were
10 destroyed or otherwise.

11 Defendants also contradict what was
12 indicated in Mr. Leary's declaration.

13 THE COURT: Can I ask you a question? A
14 question, Mr. --

15 MR. FICZKO: Sure.

16 THE COURT: Why does the kiosk having been
17 destroyed matter? All the data, it sounds to me,
18 would have been uploaded to the cloud, so who cares
19 whether or not the kiosk exists? Isn't the ultimate
20 issue whether the data itself exists?

21 MR. FICZKO: That's inaccurate. There is
22 what's called a Transaction Manager Software that is
23 installed in each computer within the kiosk which
24 stores transaction files, credit card transaction

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1 files, log files. This all goes to connect to the
2 facial geometry, which --

3 THE COURT: But that data doesn't get
4 uploaded to the cloud? Those files don't get uploaded
5 to the cloud; they remain resident on the hard drive
6 in the kiosk? That doesn't make sense to me.

7 MR. FICZKO: I believe it may be both,
8 your Honor.

9 THE COURT: Well, if it's both, again, my
10 question is why does it matter where the kiosk is if
11 the data exists somewhere?

12 MR. FICZKO: Well, we're saying both, that
13 the data exists both in the cloud and it would exist
14 in the computers if Defendants would have kept them.

15 THE COURT: Okay.

16 MR. WARD: Your Honor, may I respond on
17 that point?

18 THE COURT: Just a second, Counsel. I'll
19 give you an opportunity.

20 MR. WARD. Sure. Thank you.

21 MR. FICZKO: And we did, your Honor,
22 explore this. And as I indicated, before we filed a
23 lawsuit against Nextep and conveniently this
24 declaration was submitted, all of the evidentiary

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1 evidence indicates that the geometries, the facial
2 geometries, are linked to the customer's credit card
3 and phone number, and there's documents from Nextep
4 that clearly show that, which we submitted that
5 describe how their facial recognition kiosks worked,
6 and how it's link to tender, and how it even says that
7 one of the whole purposes is now that the customer
8 doesn't even have to bring back a credit card for the
9 next time use because it's already saved in the kiosk.

10 THE COURT: Okay. Anything else?

11 MR. FICZKO: No, your Honor. Thank you.

12 THE COURT: All right. Mr. Ward?

13 MR. WARD: Your Honor, this is just
14 another issue of underdeveloped or misleading of the
15 evidence. It's not what the evidence shows here from
16 Nextep's own documents. In fact, the witnesses
17 testified that they never linked credit card to facial
18 recognition because they couldn't either get it to
19 work or it wasn't something they were deploying at
20 Wow Bao.

21 But I think it's critical on this
22 kiosk question because I think you've hit on an
23 important point. Again, our understanding, and I
24 hired a forensic expert to investigate this once we

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1 learned that some of these kiosks had gone because I
2 wanted to determine did we lose anything of importance
3 to this case, we spent quite a bit of money to do it.

4 Mr. Ficzko had the opportunity to
5 depose individuals on it, and what we know is that
6 because everything is cloud-based, there isn't
7 anything lost. And, in fact, our expert said there is
8 nothing stored on these local hard drives that relates
9 to facial geometry whatsoever.

10 And, again, if the other side wants
11 to contest that point, that's something they have the
12 burden to establish. So we either need to brief it
13 and they can try and show you the evidence, or we need
14 to deny certification of these -- this is a critical
15 point. But it's not accurate that we have no one but
16 ourselves to blame here, because we made sure before
17 we made these arguments to the court that we had a
18 full understanding of what we were dealing with, with
19 these data.

20 And Mr. Ficzko just said all of the
21 evidence says that, you know, you can link these
22 things. Well, then they should have showed it. They
23 should have showed it in their briefing instead of
24 arguing it in a scrambled reply and making a bunch of

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1 assertions in oral argument when the actual evidence
2 and testimony says otherwise.

3 So, again, either we need to deny
4 this motion because not being able to identify a
5 single class member and not having had a mechanism
6 proposed for how we could administer this class that
7 is actually feasible is a critical part of the
8 certification inquiry, and that was not met. So
9 either we need to deny the motion or at least give the
10 Plaintiff the opportunity to certify these burdens.

11 THE COURT: All right. Mr. Ficzkowski, it's
12 your motion, you have the last word.

13 MR. FICZKO: Thank you, your Honor.

14 As I indicated, ascertainability is
15 not a means to deny a motion for class certification.
16 At this stage, we do not need to identify every
17 individual. There are means that do not violate due
18 process through which direct notice is not necessary.

19 For example, the Defendants cannot
20 produce the credit card transaction data, the parties
21 may need to subpoena credit card companies, or the
22 parties may need to rely on class member
23 self-identification at the claims stage, or notice, as
24 we previously discussed, by publication or by posting

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1 it at these Wow Bao restaurants.

2 Class members can simply be
3 identified during the claims administration process.
4 This is not a reason to deny class certification at
5 this stage.

6 THE COURT: All right. The court is going
7 to grant the motion for class certification. The
8 court finds that the Plaintiff has met the
9 requirements of identifying that the class is so
10 numerous that joinder of all members is impracticable,
11 that there are questions of fact and law that are
12 common to the class that predominate over any
13 questions affecting only individual members, that the
14 representative parties will fairly and adequately
15 protect the interest of the class, and that the class
16 action is an appropriate method for the fair and
17 efficient adjudication of controversy. The court also
18 grants class counsel as well as the motion to appoint
19 class representative.

20 So, gentlemen, where does that leave
21 us in terms of next steps?

22 MR. FICZKO: The next steps will be the
23 notice process, your Honor, which we'll need to decide
24 how to best go about that business.

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1 THE COURT: All right. Let's have a
2 status 60 days out or so.

3 Mark, do we have a date that's
4 available 60 days out?

5 THE CLERK: Yes, Judge, we can do
6 March 15th at 10:00 a.m.

7 MR. WARD: Your Honor, I'll be in trial in
8 California on that date. If we can either go a week
9 before or a couple weeks after, I'd appreciate it.

10 THE COURT: A couple weeks after, Mark?

11 THE CLERK: Would April 4th work for
12 counsel?

13 MR. WARD: That should be fine for me,
14 your Honor. I appreciate it.

15 MR. FICZKO: That works for Plaintiff.

16 THE COURT: April 4th at 10:00.

17 All right?

18 MR. FICZKO: Yes, your Honor.

19 Should we write an order?

20 THE COURT: Yes.

21 MR. FICZKO: Will do.

22 THE COURT: Ms. Pitts, is there anything
23 you need from the court?

24 THE REPORTER: There isn't. Thank you,

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1 your Honor.

2 THE COURT: All right. Then, gentlemen,
3 thank you. You folks have a great holiday.

4 (Which were all the proceedings
5 that were had in the above-entitled
6 cause on this date.)
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1 STATE OF ILLINOIS)
) SS:
2 COUNTY OF C O O K)

3
4 I, NOHEMI SALAZAR-PITTS, a Certified
5 Shorthand Reporter doing business in the City of
6 Chicago, certify that I reported in shorthand the
7 proceedings of said hearing, and that the foregoing is
8 a true and correct transcript of my shorthand notes so
9 taken as aforesaid and contains the proceedings given
10 at said hearing.

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